IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 378 OF 2004

Pandharinath Gangaram Shinde ... Appellant

V/s

Sopan Bhagappa Mahar & ors. ... Respondents

Shri M.A. Patil for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 14TH SEPT., 2004.

P.C.:

1. This second appeal is preferred by the appellant against the judgment and decree passed by the 3rd Additional District Judge, Pandharpur in Civil Appeal No. 206 of 1999 dismissing the appeal and confirming the judgment and order of the lower Court decreeing the Civil Suit No. 108 of 1982 passed by the Civil Judge, Jr. Divn., Sangola.

2. I have heard the learned counsel for the appellant. Perused the available record.

3. The facts revealed from the record shows that the respondents 1 & 2 - original plaintiffs are owners of

land Block No.781 situated at Village Medsingi, Tal. Sangola. Appellant No.1 is the owner of adjacent land Block No.779. According to the respondents 1 & 2, about in the year 1980, appellant, by destroying common bund started making encroachment on the land of respondents 1 & 2. After measurement it was found that appellant encroached upon 5 Are portion of the suit land. Hence, the suit was filed for possession for encroached portion of the land.

The appellant denied to have encroached upon the suit land and have contended that there is no change in possession of the land owned by him. Alternatively it was submitted that he had become owner of the suit property by virtue of adverse title as he was continuously, openly and peacefully held possession thereof for more than 12 years. On such and other grounds appellant sought dismissal of the suit.

The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs - respondents had proved the encroachment to the extent of 5 Are portion towards Western side of the land and, as such the suit for possesion of the said encroached portion came to be decreed against the appellant.

The appellant preferred the appeal against the judgment and order passed by the lower Court in the District Court. The learned Addl. District Judge, Pandharpur, adjudicated the appeal on merits and confirmed the findings of the lower Court and dismissed the appeal. Hence the present second appeal.

3. At the outset, it was submitted that both the lower Courts have failed to appreciate the evidence on record properly. It was also submitted that the Surveyor who was appointed as the Court Commissioner admeasured the property and concluded that there was encroachment in the suit land made by the appellants, did not measure the property on the basis of essential documents i.e. notations and Phalni Patrak (division records) and, therefore, the evidence of City Surveyor relied upon by both the Courts below cannot be accepted and, therefore, the findings to that effect that encroachment has been made, is bad in law.

However, I have perused the entire record including the deposition of the Surveyor who was appointed for the purpose of admeasuring the suit land and has come to the conclusion that appellant has in fact encroached upon

the respondents' land to the extent of 5 Are and must note that he has explained as to how survey was made and one of the two basic documents were not available but has also clarified that available record was sufficient for correct admeasuring of the impugned land. In view of this position, I do not see any reason as to why findings recorded by both the Courts below should be doubted for improper appreciation. In fact, it is well settled that where in a case wherefrom a given set of circumstances, two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The concurrent findings of facts, howsoever erroneous, cannot be disturbed by the High Court in exercise of powers of Sec.100 of the Code of Civil Procedure.

In view of this position, I do not see any merit in the second appeal and as such, the second appeal stands dismissed in limine.

Consequently, the civil application also stands dismissed.

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